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17 **UNITED STATES DISTRICT COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA**

19 **FRIENDS OF DEL NORTE;**
20 **ENVIRONMENTAL PROTECTION**
21 **INFORMATION CENTER; and CENTER**
22 **FOR BIOLOGICAL DIVERSITY,**

23 Plaintiffs,

24 v.

25 **CALIFORNIA DEPARTMENT OF**
26 **TRANSPORTATION; MALCOLM**
27 **DOUGHERTY**, in his official capacity as
28 Director of the State of California Department
of Transportation; the **NATIONAL MARINE**
FISHERIES SERVICE; and **CHRIS**
OLIVER, in his official capacity as Acting
Assistant Administrator for Fisheries,

Defendants.

Case No. 13-cv-4407 (JD)

STIPULATION AND [PROPOSED]
ORDER AMENDING STIPULATED
ORDER, DKT. NO. 97

1 WHEREAS, the instant action arose out of a challenge by Plaintiffs Friends of Del Norte,
2 et al. (collectively “Plaintiffs”)¹ to the environmental review of a proposed project along the
3 Smith River in Del Norte County (the “Proposed “Project”), by the California Department of
4 Transportation (“Caltrans”) and National Marine Fisheries Service (“NMFS,” collectively with
5 Caltrans and their respective officials sued in this action in their official capacities,
6 “Defendants”);

7 WHEREAS, this Court, on Plaintiffs’ motion, issued a Preliminary Injunction, enjoining
8 further work on the Proposed Project, pending final resolution of the action (the “Preliminary
9 Injunction”), Dkt. No. 87;

10 WHEREAS, subsequent to entry of the Preliminary Injunction, Caltrans began the process
11 of re-initiation of consultation with NMFS, under the Endangered Species Act (“ESA”) and the
12 Magnuson-Stevens Fisheries Conservation Act (“MSA”), for coho salmon and its designated
13 critical habitat under the ESA and essential fish habitat under MSA, including preparation of a
14 new biological assessment and essential fish habitat assessment by Caltrans;

15 WHEREAS, in light of the foregoing and at the suggestion of the Court, Plaintiffs and
16 Defendants (collectively, the “Parties”) entered into a stipulation, which was subsequently entered
17 as an order by the Court, which provides, in summary, for the dismissal of the instant action but
18 the continuation of the Preliminary Injunction unless and until certain conditions were met, Dkt.
19 No. 97 (the “Stipulated Order,” attached hereto as Exhibit A for the Court’s convenience);

20 WHEREAS, more specifically, Paragraph 2 of the Stipulated Order requires that
21 Defendants provide notice to Plaintiffs of further agency decisions or actions concerning the
22 Proposed Project (the “Notice”), and requires that the Notice be accompanied by specified
23 documents in order to be effective;

24 WHEREAS, Paragraphs 2 and 3 of the Stipulated Order further provide that, in the event
25 Plaintiffs file a new complaint within ninety (90) days of Defendants’ provision of the Notice
26 (the “New Complaint Filing Deadline”), Defendants are barred from making certain arguments,

27

28 ¹ Ted Souza, who was among the original Plaintiffs, is deceased.

1 including on statute of limitations grounds, in support of dismissal of such a complaint;

2 WHEREAS, Paragraph 4 of the Stipulated Order further provides that, in the event
3 Plaintiffs file such a new complaint within the New Complaint Filing Deadline, the Preliminary
4 Injunction shall continue in force until the Court issues an order terminating or modifying the
5 Preliminary Injunction upon motion or stipulation;

6 WHEREAS, a dispute has arisen between Caltrans and Plaintiffs concerning the date on
7 which Caltrans provided the Notice, in compliance with the requirements of Paragraph 2 of the
8 Stipulated Order;

9 WHEREAS, the parties have reached a compromise to address this dispute, the terms of
10 which are memorialized below; and

11 WHEREAS, the signatories below have authorized the filer of this Stipulation to sign on
12 their behalves:

13 THE PARTIES HEREBY STIPULATE AND AGREE, IN ACCORDANCE WITH CIVIL
14 LOCAL RULE 7-12, SUBJECT TO COURT APPROVAL:

15 1. The New Complaint Filing Deadline is January 5, 2018;

16 2. Consistent with the New Complaint Filing Deadline, the following dates and
17 references in the Stipulated Order are modified:

18 (a) Defendant shall not seek dismissal of any claim in Plaintiffs' new filed Complaint
19 as untimely and/or barred by an applicable statute of limitations if it is filed on or before
20 January 5, 2018, unless such claim would have been untimely if brought in the First
21 Amended Complaint in this action (ECF Doc. 74). (Paragraph 2)

22 (b) For claims brought after January 5, 2018, amendment or supplementation of the
23 Complaint shall be governed by Federal Rule of Civil Procedure 15. (Paragraph 3)

24 (c) The Order Granting Preliminary Injunction (ECF Doc. 87) shall continue in force
25 until the Court issues an order terminating or modifying the injunction upon motion or
26 stipulation, unless a new Complaint is not filed by Plaintiffs on or before January 5,
27 2018, in which case it shall be automatically terminated. (Paragraph 4)

28 3. No other provision of the Stipulated Order is modified or changed.

4. In the event and to the extent that Plaintiffs ground any claim in a new complaint on documents provided by Defendant State of California and Malcolm Dougherty (“State Defendants”) to Plaintiffs after November 4, 2017, State Defendants are barred from challenging such claims on the ground that Plaintiffs’ Notice of Intent to Sue, sent on November 4, 2017, did not adequately describe such claims.

Respectfully Submitted,

DATED: November 22, 2017

/s/Stuart G. Gross
Stuart G. Gross,
GROSS & KLEIN LLP
Attorney for Plaintiffs

DATED: November 22, 2017

/s/Janet Wong
Janet Wong, Attorney for Defendants
CALIFORNIA DEPARTMENT OF
TRANSPORTATION and MALCOLM
DOUGHERTY

DATED: November 22, 2017

/s/ Clifford Stevens
Clifford Stevens, Attorney for Federal Defendants
NATIONAL MARINE FISHERIES SERVICE and
CHRIS OLIVER

[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATE:

JAMES DONATO
UNITED STATES DISTRICT JUDGE